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E-filing

FILED

NOV 27 2007

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO, CALIFORNIA

ADR

Liu Xiaozhi

Plaintiff,

vs.

Michael Mukasey, Attorney General of the  
 United States; Michael Chertoff, Secretary of the  
 Department of Homeland Security; Emilio  
 Gonzalez, Director of United States Citizenship &  
 Immigration Services; Robert S. Mueller, III,  
 Christina Poulos, Director of the California Service  
 Center; Robin Barrett, USCIS District Director,  
 et al;  
 Defendants

C07-05983

Case No.

COMPLAINT FOR MANDAMUS  
 TO COMPEL DEFENDANTS  
 TO COMPLETE ADJUDICATION  
 OF ADJUSTMENT OF STATUS  
 APPLICATION

A98-445-667  
 WAC 05-067-51678

PLAINTIFFS' ORIGINAL COMPLAINT  
 FOR WRIT IN THE NATURE OF  
 MANDAMUS

COMES NOW Liu Xiaozhi, Plaintiff in the above-styled and numbered cause, and for cause  
 of action would show unto the Court to following:

1. This action is brought against the Defendants to compel action on an application for lawful permanent resident status properly filed by the Plaintiff. The application was filed and remains within the jurisdiction of the Defendants, who have improperly withheld action on

said application to Plaintiff's detriment.

### PARTIES

2. Plaintiff Liu Xiaozhi is a 40 year old native and citizen of China. On or about January 7, 2005, she applied to adjust her status to that of a lawful permanent resident as a derivative of her husband's approved I-140 petition. Her husband's adjustment of status has been granted.
3. Defendant Michael Mukasey is Attorney General of the United States, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Justice. 8 U.S.C. §1103(a). More specifically, the Attorney General is responsible for the adjudication of applications for adjustment of status filed pursuant to §245 of the Immigration and Nationality Act (INA), 8 U.S.C. §1255. The United States Citizenship and Immigration Service is an agency within the Department of Justice to whom the Attorney General's authority has in part been delegated, and is subject to the Attorney General's supervision.
4. Defendant Michael Chertoff, is Secretary of the Department of Homeland Security, and this action is brought against him in his official capacity. He is charged with supervisory authority over all operations within the Department of Homeland Security. The United States Citizenship and Immigration Service is an agency within the Department of Homeland Security to whom the Secretary of Homeland Security's authority has in part been delegated, and is subject to his supervision.
5. Defendant, Emilio Gonzalez, is Director of USCIS, and this action is brought against him in his official capacity. He is charged with supervisory authority over all operations of USCIS.
6. Defendant, Christina Poulos, is Director of the USCIS California Service Center, and this action is brought against her in her official capacity. She is charged with supervisory authority over all operations of the California Service Center.

7. Defendant, Robin Barrett, USCIS District Director is the official of the United States Citizenship and Immigration Service generally charged with supervisory authority over all operations of the USCIS within her District with certain specific exceptions not relevant here. This action is brought against her in her official capacity. 8 CFR §103.1(g) (2)(ii)(B). As will be shown, Defendant District Director is the official with whom Plaintiffs' USCIS applications were properly filed.
8. Defendant, Robert S. Mueller, III, Director of the Federal Bureau of Investigations is charged with Supervisory Authority over all operations of the FBI. Defendant, Robert Mueller, III, is responsible for the completion of the security clearance in Plaintiffs' case.

### JURISDICTION

9. Jurisdiction in this case is proper under 28 U.S.C. §§1331 and 1361, 5 U.S.C. §701 *et seq.*, and 28 U.S.C. §2201 *et seq.* Relief is requested pursuant to said statutes.

### VENUE

10. Venue is proper in this court, pursuant to 28 U.S.C. §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred. More specifically, Plaintiffs' applications for Immediate relative status and for lawful permanent resident status were properly filed and, to Plaintiffs' knowledge, remain pending with the San Francisco USCIS District Director.

### EXHAUSTION OF REMEDIES

11. Plaintiff has exhausted her administrative remedies. Plaintiff has made in-person, inquiries concerning the status of the application, to no avail. There are no administrative remedies remaining for the Plaintiff to exhaust, because there is no administrative body to which she can appeal the refusal of the Defendants to perform their ministerial duties.

**CAUSE OF ACTION**

12. On or about January 7, 2005, Plaintiff submitted an I-485 application to adjust her status to that of a lawful permanent resident.
13. Plaintiff has not received any written notice of decision regarding the I-485 petition.
14. At the time of said filing, such applications were being adjudicated by the Defendant District Director in a period of between three and nine months.
15. Ms. Xiaozhi's application for adjustment of status has now remained unadjudicated for two years and ten months. See *Nadler v. INS*, 737 F.Supp. 658 (D.D.C. 1989)(a delay of two years in the processing of an application for adjustment of status was considered unreasonable); *Paunescu v. INS*, 76 F.Supp. 2d 896, 902 (N.D. ILL. 1999)(mandamus granted for two-year delay in processing adjustment of status application). *Yu v. Brown*, 36 F. Supp. 2d 922, 935 (D.N.M. 1999) (two and one half year delay is on its face an unreasonable amount of time to process a routine application and requires an explanation).
16. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements. To date, said application has not been adjudicated.
17. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have delayed in and have refused to adjudicate Plaintiff's application for almost three years, thereby depriving her of the right to a decision on her status and the peace of mind to which Plaintiff is entitled.
18. Ms. Xiaozhi Liu has been damaged by being deprived of the status of lawful permanent resident during the interminable pendency of her application. Ms. Xiaozhi Liu seeks to integrate fully into American life, society and culture. Naturalization as an American citizen, with the rights and privileges inherent therein, depends upon prior permanent resident status

for at least 5 years. Ms. Xiaozhi Liu is therefore being deprived of the right to accumulate the requisite time as a permanent resident before she is eligible to apply for naturalization, as a direct result of Defendants' failure to timely adjudicate her application to adjust status.

19. Plaintiff has been further damaged by the failure of Defendants to act in accord with their duties under the law.

(a) Specifically, Plaintiff Ms. Xiaozhi Liu would like to travel internationally. So long as her application for adjustment of status is pending, her travel is restricted by federal regulation which requires special permission to travel abroad ("advanced parole") during the pendency of such applications. 8 CFR §245.2(a)(4). Departure without the advanced parole would be deemed an abandonment of the permanent resident application. *Id.* This situation operates to the great inconvenience and harassment of Plaintiffs.

(b) Plaintiff, Ms. Xiaozhi Liu has further been damaged in that her employment authorization is tied to her status as an applicant for permanent residency, and is limited to increments not to exceed one year. 8 CFR §274a.12(c)(9). Therefore, as in the case of the advanced parole, Ms. Xiaozhi Liu has been forced to repeatedly apply (and pay) for extensions of employment authorization, to the continued inconvenience and harassment of Ms. Xiaozhi Liu, which is required by law to continually insure her work eligibility. INA §274A(a)(2), 8 U.S.C. §1324a(a)(2).

20. The Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.

21. Plaintiff has made status inquiries in an attempt to secure adjudication of her application, all

to no avail. Accordingly, Plaintiff has been forced to retain the services of an attorney to pursue the instant action.

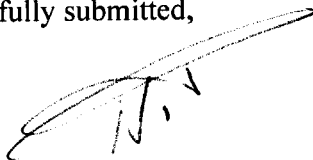
**PRAYER**

22. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- (a) requiring Defendants to adjudicate both Plaintiff's application for adjustment of status within 30 days;
- (b) awarding Plaintiff's reasonable attorney's fees; and
- (c) granting such other relief at law and in equity as justice may require.

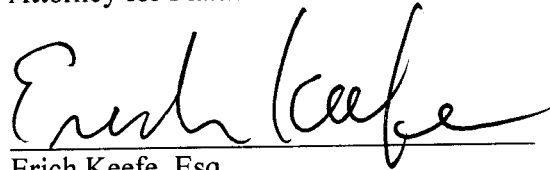
Dated: November \_\_, 2007

Respectfully submitted,



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Shah Peerally, Esq.  
Attorney for Plaintiff



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Erich Keefe, Esq.  
Attorney for Plaintiff

**LIST OF EXHIBITS**

*Exhibit Description*

- 1 Notice of Receipt of I-485 dated January 7, 2005;
- 2 I-797C, with biometrics processing stamp dated September 28, 2005;
- 3 I-797C, with biometrics processing stamp dated September 29, 2006;
- 4 DBI tenprinter applicant information worksheet, dated February 3, 2005.



**“Exhibit 1”**



# THE UNITED STATES OF AMERICA

|  |                |   |
|--|----------------|---|
| RECEIPT NUMBER<br>WAC-05-067-51678   |                | CASE TYPE<br>I485 APPLICATION TO ADJUST TO PERMANENT<br>RESIDENT STATUS                             |
| RECEIVED DATE<br>December 29, 2004   | PRIORITY DATE  | APPLICANT<br>A98 445 667<br>LIU, XIAOZHI  |
| NOTICE DATE<br>January 7, 2005   | PAGE<br>1 of 1 |   |
| MILES ROEDER<br>TAFAPOLSKY & SMITH LLP<br>RE: XIAOZHI LIU<br>90 NEW MONTGOMERY ST 8 FL<br>SAN FRANCISCO CA 94105 |                | Notice Type: Receipt Notice<br><br>Amount received: \$ 385.00<br><br>Section: Derivative adjustment |

**Receipt notice** - If any of the above information is incorrect, call customer service immediately.

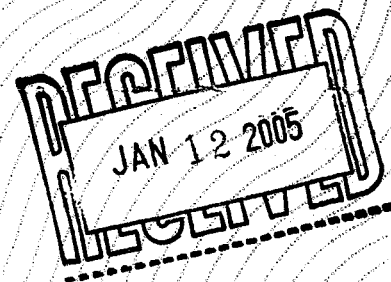
**Processing time** - Processing times vary by kind of case.

- You can check our current processing time for this kind of case on our website at [uscis.gov](http://uscis.gov).
- On our website you can also sign up to get free e-mail updates as we complete key processing steps on this case.
- Most of the time your case is pending the processing status will not change because we will be working on others filed earlier.
- We will notify you by mail when we make a decision on this case, or if we need something from you.
- If you move while this case is pending, call customer service when you move.
- Processing times can change. If you don't get a decision or update from us within our current processing time, check our website or call for an update.

If you have questions, check our website or call customer service. Please save this notice, and have it with you if you contact us about this case.

**Notice to all customers with a pending I-130 petition** - USCIS is now processing Form I-130, Petition for Alien Relative, as a visa number becomes available. Filing and approval of an I-130 relative petition is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident. This process will allow USCIS to concentrate resources first on cases where visas are actually available. This process should not delay the ability of one's relative to apply for an immigrant visa or adjustment of status. Refer to [www.state.gov/travel](http://www.state.gov/travel) <<http://www.state.gov/travel>> to determine current visa availability dates. For more information, please visit our website at [www.uscis.gov](http://www.uscis.gov) or contact us at 1-800-375-5283.

Always remember to call customer service if you move while your case is pending. If you have a pending I-130 relative petition, also call customer service if you should decide to withdraw your petition or if you become a U.S. citizen.



Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE  
CALIFORNIA SERVICE CENTER  
P. O. BOX 30111  
LAGUNA NIGUEL CA 92607-0111  
Customer Service Telephone: (800) 375-5283



**“Exhibit 2”**

# THE UNITED STATES OF AMERICA

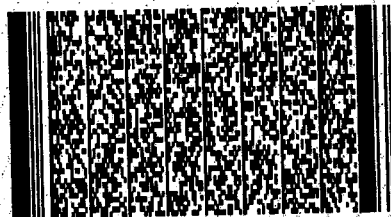
## ASC Appointment Notice

|   |                        |                           |
|---|------------------------|---------------------------|
| CASE TYPE<br>I485 Application to Register Permanent Resident or Adjust Status | SOCIAL SECURITY NUMBER | NOTICE DATE<br>09/22/2005 |
| APPLICATION NUMBER<br>WAC0506751678   | CODE<br>2              | USCIS A#<br>A098445667    |
|   | SERVICE CENTER<br>WSC  | PAGE<br>1 of 1            |

XIAOZHI LIU  
3338 SHADOW LEAF DR  
SAN JOSE, CA 95132

BIOMETRICS PROCESSING STAMP  
APP SITE CODE: XTE / SAN JOSE  
BIOMETRICS QA REVIEW BY:

ON SEP 28 2005  
TENPRINTS QA REVIEW BY:  
ON



To process your application, the U. S. Citizenship & Immigration Services (USCIS) must capture your biometrics.

**PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.**

If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below.

**RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW AND FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.**

### APPLICATION SUPPORT CENTER

USCIS SAN JOSE  
122 CHARCOT AVE.  
SAN JOSE, CA 95131

### DATE AND TIME OF APPOINTMENT

10/25/2005  
11:00 AM

**WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR BIOMETRICS TAKEN, YOU MUST BRING:**

- 1. THIS APPOINTMENT NOTICE** and
- 2. PHOTO IDENTIFICATION.** Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, your biometrics may not be taken.

### REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

U. S. Citizenship & Immigration Services (USCIS) cannot guarantee the day preferred, but will do so to the extent possible.  
Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

USCIS SAN JOSE  
122 CHARCOT AVE.  
SAN JOSE, CA 95131

APPLICATION NUMBER 1  
I485 - WAC0506751678



If you have any questions regarding this notice, please call 1-800-375-5283.

### WARNING!

*Due to limited seating availability in our lobby area, only persons who are necessary to assist with transportation or completing the biometrics worksheet should accompany you.*

*If you have open wounds or bandages/casts when you appear, the USCIS may reschedule your appointment if it is determined your injuries will interfere with taking your biometrics.*

**“Exhibit 3”**



# THE UNITED STATES OF AMERICA

## ASC Appointment Notice

### CASE TYPE

I485 Application to Register Permanent Resident or Adjust Status

### APPLICATION NUMBER

WAC0506751678

### SOCIAL SECURITY NUMBER

TCR

### USCIS AM

A098445667

### SERVICE CENTER

WSC

### NOTICE DATE

9/19/2006

### CODE

1

### PAGE

1 of 1

XIAOZHI LIU  
3338 SHADOW LEAF DR  
SAN JOSE, CA 95132

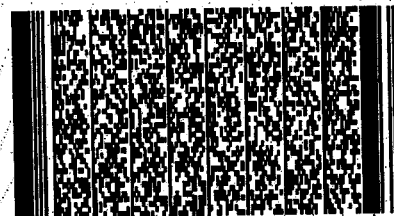
BIOMETRICS PROCESSING STAMP

ASC SITE CODE:

BIOMETRICS QA REVIEW BY:

ON  
TENPRINTS QA REVIEW BY:

ON SEP 29 2006



To process your application, the U. S. Citizenship & Immigration Services (USCIS) must capture your biometrics.

**PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.  
IF YOU FAIL TO APPEAR AS SCHEDULED, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.**

### APPLICATION SUPPORT CENTER

USCIS SAN JOSE  
122 CHARCOT AVE.  
SAN JOSE, CA 95131

### DATE AND TIME OF APPOINTMENT

10/05/2006

10:00 AM

**WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR BIOMETRICS TAKEN, YOU MUST BRING:**

- 1. THIS APPOINTMENT NOTICE** and
- 2. PHOTO IDENTIFICATION.** Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, your biometrics may not be taken.

### REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

U. S. Citizenship & Immigration Services (USCIS) cannot guarantee the day preferred, but will do so to the extent possible. Upon receipt of your request, you will be provided a new appointment notice. Make a copy of this notice for your records, then mail the original with your request to USCIS SAN JOSE, 122 CHARCOT AVE., SAN JOSE, CA 95131

### APPLICATION NUMBER 1

I485 - WAC0506751678



If you have any questions regarding this notice, please call 1-800-375-5283.

### WARNING!

*Due to limited seating availability in our lobby area, only persons who are necessary to assist with transportation or completing the biometrics worksheet should accompany you.*

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**“Exhibit 4”**

## 007

NAME: Liu Xiao zhi  
Last First Middle Suffix

PLACE OF BIRTH: Hei Long Jiang SEX: (Male or Female) Female

☐ American Indian or Alaskan Native      ☐ Black      ☐ White (Hispanic also check)  
☒ Asian or Pacific Island      ☐ Unknown

**EYE COLOR:** Check the most appropriate code below:

**HAIR COLOR:** Check the most appropriate code below:

COUNTRY OF CITIZENSHIP: CHINESE

ALIEN REGISTRATION NUMBER: A 098 445 667

| Last | First | Middle | Suffix |
|------|-------|--------|--------|
|------|-------|--------|--------|

|                        |             |          |       |          |
|------------------------|-------------|----------|-------|----------|
| 3338 Shadow Leaf Dr.   |             | San Jose | CA    | 95132    |
| Street number and name | Apartment # | City     | State | Zip Code |

**REASON FOR FINGERPRINT APPLICATION: (I-485, I-589, I-600, I-821, N-400):** *I-485*

FD-258 Completed at ASC LOCAL AIW STAMP  
On: FEB 3 2007 By: XTE/SANJOS  
QC Check Completed By: [Signature]